IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 23084 of 2004

Between:

A. Navajivan Reddy, S/o Ganga Reddy, Group Centre,
CRPF, Hyderabad, R/o Banswada village,Nizamabad District.

..... PETITIONER

AND

1 The Addl. Dy. Inspector General of Police, Group Centre, CRPF ,

Hyderabad - 500 005.
2 The Commandant, 154 Bn. CRPF, Ranga Reddy,
Andhra Pradesh.
3 The Deputy Inspector General of Police, Central Reserve Police

Force, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records relating to proceedings of the 2nd Respondent bearing No D.V-1/2004-154-Estt.II dated 4th September, 2004 as confirmed by the 4th respondent in Appeal by its order bearing R.XIII-35/2004-Adm.I, dated 19-12-2004 by issuing appropriate writ, order or direction more particularly in the nature of Certiorari and quash the same as illegal, void, without jurisdiction and contrary to Rules and direct reinstatement of the applicant into Service as Constable as if the impugned order were never passed with all consequential benefits.

(The prayer is amended as per Court Orders dated 18-02-2005 in WPMP No.2440 of 2005)

Counsel for the Petitioner: MR.K.RAMA SUBBA RAO

Counsel for the Respondents: MR.A.RAJASEKHAR REDDY, S.C. for Central

Government.

The Court, at the stage of admission, made the following:

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23084 of 2004

ORDER:

Challenging the proceedings of the 2nd respondent bearing No.D.V-1/2004-154-Estt.II dated 04-09-2004, the present writ petition is filed.

2. For the purpose of disposal of the writ petition, it is not necessary to mention all the pleadings raised by the parties.

3. The petitioner was removed from service by an order dated 04-09-2004. The said order reads as follows:

> "Consequent on expiry of a period of one month of notice of termination service under Rule-5 (1) of Central Civil Service (Temporary Service) Rules, 1965 read with Dte.Genl.CRPF O/O No.D.II-2/76-Adm. Dated 10-08-1976 issued vide this office letter No.D-V-1/2004-154-Estt.II dated 06/08/2004 to No.041 540738 CT/GD, A.Navajeevan Reddy S/o. Shri Ganga Reddy A. of this unit, he is struck off from the strength of this unit w.e.f. 04/09/2004 (AN).
>
> Further, his desertion period from 02/08/2004 to 05/08/2004 and notice period from 06-08-2004 to 04-09-2004 total 34 (thirty four) days be treated as 'Dies-non'."

4. The only question raised in this writ petition is whether the order dated 04-09-2004 was served on the petitioner, and if it was served, then the petitioner has to be removed as he was struck off from the strength of the unit, consequent on expiry of a period of one month of notice of termination of service ordered in pursuance of section 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (for brevity 'Rules, 1965').

5. Rule 5 (1) deals with termination of temporary service. Clauses (a) and (b) of Sub-rule (1) of Rule 5 of the Rules, 1965 read as follows:

> **"Rule 5. Termination of Temporary Service:**
>
> (1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;
>
> (b) the period of such notice shall be one month:
>
> Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay *plus* allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month."

6. The above provision makes it very clear that a temporary Government Servant may be removed from service by giving one-month notice. The procedure to be followed for serving the notice on such Government servant is contemplated under the note append to the Rule 5 (1) of the Rules, 1965, which reads as follows:

> "(i) The notice shall be delivered or tendered to the Government servant in person;
>
> (ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of the Government servant available with the Appointing Authority;
>
> (iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette."

7. The above note clearly indicates that the notice shall be delivered or tendered to the Government servant in person and when such personal service is not practicable, the notice can also be served by registered post acknowledgment due to the address of the Government servant available with

the appointing authority and if the notice sent by registered post is returned un-served, it shall be published in the official gazette and upon such publication, it shall be deemed to have been personally served on such Government Servant.

8. Therefore, the short point is whether the impugned proceedings dated 04-09-2004 has been served or not.

9. According to the petitioner, the said notice has not been sent to him. The respondent takes plea in the counter-affidavit stating that the notice was sent to the petitioner by registered post and it was returned with an endorsement that the petitioner was found to be out of station with effect from 09-08-2004 to 14-08-2004. Therefore, it is not a case of avoidance of receipt of registered post or refusal by the petitioner. As he was out of station, the registered post has not been served on the petitioner. Therefore, the respondents ought to have notified the same in the gazette. Admittedly, no such publication was made in the official gazette. So, the procedure as contemplated under the note appended to the Rule 5 (1) of the Rules, 1965 was not adopted.

10. Therefore, the impugned order is set aside, directing the respondents to take appropriate decision in accordance with law particularly with reference to the Rule 5 of the Rules, 1965. Since the order under challenge is set aside, it is needless to observe that the order passed by the appellate authority is of no consequence. This order will not preclude the respondents in taking any action in accordance with the rules.

11. Accordingly, the writ petition, with the above direction, is allowed. No costs.

February 18, 2005

Note:

Furnish C.C. within one week

B/o.

Kvr

To

1 The Addl. Dy. Inspector General of Police, Group Centre, CRPF ,

Hyderabad - 500 005.

2 The Commandant, 154 Bn. CRPF, Ranga Reddy,
Andhra Pradesh.

3 The Deputy Inspector General of Police, Central Reserve Police

Force, Hyderabad.

4 Two C.D copies.